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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/633,233

08/02/2003

Matthias Boldt

61-03

2446

37158 7590 01/30/2007
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EXAMINER

CHOI, FRANK I

ART UNIT

PAPER NUMBER

1616

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/30/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/633,233	Applicant(s) BOLDT, MATTHIAS	
	Examiner Frank I. Choi	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chinery (US Pat. App. Pub. 2004/0077556) in view of Lawn et al. (US Pat. 6,821,774), Brink (US Pat. 6,113,949) and Allen (US Pat. 5,480,657).

Chinery discloses a composition containing caffeine (which increases cAMP), at least one of synephrine (which increases cAMP), hordenine, octopamine, tyramine and N-methyltyramine, yohimbine (which increases cAMP), which promotes weight loss in mammals (paragraphs 0075-0076, 0090-0095, 0103-0105, 0155-0157). It is disclosed that the composition may be administered orally and can be in the form of capsules or powder or a liquid suspension, colloidal suspension, shake or aqueous mixture, which can be taken once daily, or in divided doses taken, for example, before the morning exercise session and after said exercise in the mid-afternoon (Paragraphs 0175-0177). It is disclosed that the amount of caffeine is most preferably approximately 150 mg to 500 mg per day, the amount of synephrine is most preferably approximately 40 mg to 80 mg per day and that the amount of yohimbine is most preferably approximately 12 mg to 18 mg per day (paragraphs 0174, 0210, 0260). It is disclosed that the composition may optionally and additionally contain alkaloids (paragraph 0262). It is disclosed

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that combining an alpha-1 agonist with forskolin helps to increase thyroid production which is useful increasing weight loss (Paragraph 0093).

Lawn et al. disclose methods for increasing cholesterol efflux from cells of a mammal by administering forskolin which increases synthesis of cAMP and vinpocetine which inhibits the degradation of cAMP (Column 9, lines 1-16).

Brink discloses a composition for weight control containing about 75 mg of guggulsterones (column 5, lines 47-68, column 6, lines 1-3).

Allen discloses a composition for weight control containing caffeine and a source of chromium, such as black pepper (column 2, lines 10-68, Column 7, lines 5-63).

The prior art discloses the combination of caffeine (which increases cAMP), at least one of synephrine (which increases cAMP), hordenine, octopamine, tyramine and N-methyltyramine, yohimbine (which increases cAMP), which promotes weight loss in mammals. The difference between the prior art and the claimed invention is that the prior art does not expressly disclose the combination of forskolin, guggulsterone and vinca alkaloid with Caffeine, Adrenergic amine and alpha 2-receptor antagonist. However, the prior art amply suggests the same as the prior art discloses that the caffeine, adrenergic amines, forskolin, guggulsterone and alpha-2-receptor antagonists are used to control weight, that caffeine, adrenergic amines and alpha-2-receptor antagonists increase cAMP and that vinpocetine inhibits cAMP degradation. As such, it would have been well within the skill of and one ordinary skill in the art to combine the above with the expectation that the addition of vinpocetine would potentiate the effects of the caffeine, adrenergic amines and alpha-2-receptor antagonists by inhibiting the degradation of cAMP and that the combination of the six components would be effective in controlling weight. Further, it

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would have been well within the skill to additionally add Black Pepper with the expectation that the chromium contained therein would also be effective in promoting weight loss.

The Examiner has duly considered the Applicant's arguments but deems them unpersuasive.

The Applicant argues that the Examiner has not cited to any of the four references that teach, suggest or disclose the combination. However, the rationale to modify or combine the prior art does not have to be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). See also *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) (setting forth test for implicit teachings); *In re Eli Lilly & Co.*, 902 F.2d 943, 14 USPQ2d 1741 (Fed. Cir. 1990) (discussion of reliance on legal precedent); *In re Nilssen*, 851 F.2d 1401, 1403, 7 USPQ2d 1500, 1502 (Fed. Cir. 1988) (references do not have to explicitly suggest combining teachings); and *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993) (reliance on logic and sound scientific reasoning). The Examiner has provided the motivation to modify and/or combine the references as indicated above, as such, the rejection herein is maintained.

Therefore, the claimed invention, as a whole, would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention has been collectively taught by the combined teachings of the references.

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Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

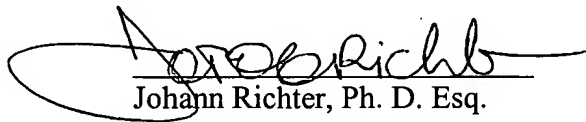
A facsimile center has been established in Technology Center 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier number for accessing the facsimile machine is 571-273-8300.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Choi whose telephone number is (571)272-0610. Examiner maintains a compressed schedule and may be reached Monday, Tuesday, Thursday, Friday, 6:00 am – 4:30 pm (EST).

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Dr. Johann Richter, can be reached at (571)272-0646. Additionally, Technology Center 1600's Receptionist and Customer Service can be reached at (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frank Choi
Patent Examiner
Technology Center 1600
January 22, 2007


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